

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

POWERSOUTH ENERGY COOPERATIVE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 23-00250-JB-MU
)	
CASEY INDUSTRIAL, INC., et al.)	
)	
Defendants.)	

CASEY INDUSTRIAL, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 23-00319-JB-B
)	
POWERSOUTH ENERGY COOPERATIVE, et al.,)	
)	
Defendants.)	

ORDER

This action is before the Court, *sua sponte*, following its Order granting consolidation of the captioned actions for the limited purpose of conducting pretrial discovery. (Doc. 24). The Court has reviewed the Rule 26(f) report, filed on March 15, 2024, in which the parties “agree that these cases, which are currently consolidated for discovery, should also be consolidated for trial.” (Doc. 66). The parties also agree to entry of “an order staying discovery as to any party who files a motion to dismiss as to the claims raised against them [and that t]he stay would be limited in scope and apply only to those parties who file a motion to dismiss.” (*Id.*).

I. Consolidation:

These actions (civil action nos. 23-250-JB-MU and 23-319-JB-B) arise out of a project for the construction and renovation of a combined cycle power plant in Washington County, Alabama. Claims are asserted in both actions regarding the destruction of a Heat Recovery Steam Generator during the course of the project.

Rule 42(a) of the Federal Rules of Civil Procedure provides that the Court may consolidate civil actions which “involve a common question of law or fact.” Fed. R. Civ. P. 42(a)(2). The Court of Appeals for the Eleventh Circuit explained:

Rule 42(a) codifies the district court's “inherent managerial power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Young v. City of Augusta*, 59 F.3d 1160, 1168 (11th Cir. 1995) (internal citations omitted). A trial court's decision to consolidate suits is discretionary. *Id.*

When deciding if separate lawsuits should be consolidated into a single action, a trial court weighs several factors, including (1) the risk of prejudice in allowing the matters to proceed separately, (2) the potential for confusion of facts or legal issues, (3) the risk of inconsistent verdicts, (4) the burden on parties, witnesses, and the court, and (5) the length of time and relative expense involved in conducting a single trial or multiple trials.

Blitz Telecom Consulting, LLC v. Peerless Network, Inc., 727 Fed. Appx. 562, 570 (11th Cir. 2018) (citing *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)).

The Court finds the actions share common questions of law and fact. The Court further finds the burden on the parties, witnesses, and the Court, as well as the time and expense involved in conducting discovery and two separate trials, will be reduced by consolidation. Based on these considerations, and for the reasons stated herein, the Court concludes these actions are due to be consolidate for all purposes, including trial.

The Court hereby ORDERS that these actions are CONSOLIDATED for all purposes, including trial. The consolidated actions shall continue under Civil Action No. 23-250-JB-MU for all purposes and future documents shall be filed and docketed only in Civil Action No. 23-250-JB-MU. The Clerk is directed to extract documents from Civil Action No. 23-319-JB-B and make those documents part of Civil Action No. 23-250-JB-MU, and close Civil Action No. 23-319-JB-B.

II. Stay:

Based on the agreement of the parties expressed in the Rule 26 Report (Doc. 66), and upon due consideration, the Court orders that discovery is stayed as to any party who has filed or files a motion to dismiss as to the claims raised against them. The Stay is limited and applies only to those parties who file a motion to dismiss.

DONE and ORDERED this 1st day of April, 2024.

/s/ JEFFREY U. BEAVERSTOCK
CHIEF UNITED STATES DISTRICT JUDGE